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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

NO. 84-381

SEAFLITE, INCORPORATED, Petitioner

vs.

DIRECTOR, Department of Transportation, State of Hawaii and HOKUNANI ASSOCIATES, INC., dba Hokunani Catamaran Cruises, Respondents

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ON PETITION FOR WRIT OF CERTIORARI TO THE HAWAII SUPREME COURT

BRIEF FOR RESPONDENT DIRECTOR, DEPARTMENT OF TRANSPORTATION, STATE OF HAWAII, IN OPPOSITION

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JURISDICTION

This Court does not have jurisdiction to consider this petition as the rights and/or privileges Petitioner claims under the Constitution

of the United States were not properly raised before the State of Hawaii Supreme Court.

STATEMENT OF THE CASE

This case involves a landlord-tenant dispute in the context of Respondent's attempts to institute marine transportation, i.e. hydrofoils or surface effect vessels, between the islands of Oahu, Maui and Kauai in the State of Hawaii. Following a series of mishaps with Petitioner's corporate predecessor Pacific Sea Transportation, Limited (hereinafter PSTL) leases between Respondent and PSTL were terminated. See Defendant's Exhibit F. These leases all contained clauses that improvements made to Respondent's property by PSTL would revert to Respondent upon termination of the leases. See Plaintiff's Exhibits 29, 30, and 31. The improvements which Petitioner claims title to were in fact constructed by PSTL (Tr. 8/3/82, at 276:10-20) and reverted to Respondent. Respondent negotiated a Consolidated Lease with Petitioner to supplant those earlier leases. Prior to execution of

the Consolidated Lease, Petitioner's president purchased all of PSTL's stock for $10. See Plaintiff's Exhibit 3.

Respondent entered into this Consolidated Lease based on representations made to Respondent by Petitioner's president and Petitioner's president's attorney that Petitioner would reinstate interisland marine transportation service within two years of executing the Consolidated Lease, or the summer of 1981. State of Hawaii officials testified that without this definitive commencement date for interisland service, the State would never have entered into a lease with Petitioner. Towards this end of achieving a start up of interisland marine transportation service by mid-1981, Respondent's understanding was that Petitioner would furnish Respondent with a definite purchase agreement for the vessels Petitioner would use to commence that service.

In fact, Petitioner never did commence interisland marine transportation service. Disputes arose as to Petitioner's obligations under the

Consolidated Lease. Although Petitioner was supposed to use the leased premises to reinstate interisland marine transportation in the State of Hawaii, Petitioner in fact sublet Respondent's property for parking spaces, office space, storage space, mooring of boats, workshops, and manufacturing of ice. See Appendix C to Petitioner's Brief, at 2-3. These subleases were for the most part in violation of the Consolidated Lease and contrary to law, as they were not approved by the State Board of Land and Natural Resources.

Petitioner filed suit in the Circuit Court of the First Circuit, State of Hawaii, and Respondent counterclaimed, asking the trial court to find the Consolidated Lease null and void for lack of a material term.

Trial in this matter lasted 10 days, spread over several months. The trial court indicated that it would consider:

> Whether there was an agreement or whether there was an understanding or there was a mutual meeting of the mind regarding when, if any time, that the interisland

> transportation sea service should have started or not. (Tr. 8/4/82, at 364:21-25)

Testimony at trial revealed that Petitioner's president did not feel that he was under any time obligation to commence service, and that Petitioner could take ten years to commence service.

Given those divergent positions, the trial court found that there was no meeting of the minds on this essential condition of the Consolidated Lease. As the Lease was one for the express purpose of instituting interisland marine transportation, a commencement date for such service would be material and essential.

Petitioner appealed the trial court's ruling to the State of Hawaii Supreme Court, which after reviewing the 76 exhibits, 17 volumes of depositions, 23 volumes of transcripts, and over 2,000 pages of pleadings found no reversible error in the trial court's decision. It therefore affirmed.

During this state court litigation, Petitioner also filed suit in the United States District Court for the District of Hawaii (Seaflite, Incorporated v. Higashionna, et al., U.S.D.C. No. 83-0858). Petitioner alleged that its "property" (PSTL lease improvements) was being taken without due process or just compensation. Petitioner's complaint was dismissed, as the federal court found that adequate state due process protections were available to Petitioner. See Appendix A. Petitioner's appeal of this dismissal was subsequently withdrawn. See Appendix B.*

ARGUMENT

I. NO FEDERAL CONSTITUTIONAL CLAIMS WERE RAISED BEFORE THE HAWAII SUPREME COURT.

Petitioner admits that before the Hawaii Supreme Court, it merely

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* It should be noted that the Public Utilities Commission of the State of Hawaii has subsequently revoked Seaflite's license to operate.

claimed that "The trial court erred in not giving Seaflite due process of law." As such, its petition before this Court is fatally flawed for the same reasons enunciated in Bowe v. Scott, 233 U.S. 658, 664-65 (1914). In Bowe, it was argued that a Federal question had been raised by the passage:

> That the ordinance is an attempt to take from your complainants whose property adjoins and abuts upon the said alley their rights in and to said alley without due process of law.

This Court wrote that:

> [I]t is settled that such an averment making no reference to the Constitution of the United States and asserting no express rights thereunder is solely referable to the state constitution, which in this instance has a due process clause, and affords no basis whatever for invoking the jurisdiction of this court.

Similarly here, the State of Hawaii Constitution has a due process clause, see Article I, Sec. 4, and Petitioner has no basis to invoke this Court's jurisdiction. See also Brady v.

Maryland, 373 U.S. 83, 91 (1963) (separate opinion of White, J.).

II. THE HAWAII SUPREME COURT'S DECISION RESTED ON AN INDEPENDENT AND ADEQUATE STATE GROUND.

It is well-settled that if a state court judgment rests on an independent and adequate state ground, a petition for writ of certiorari should not be granted. See Wilson v. Lewis, Inc., 355 U.S. 597 (1958); Herb v. Pitcairn, 324 U.S. 117 (1945).

Petitioner must clearly and affirmatively demonstrate that the Hawaii Supreme Court's decision cannot be supported by state grounds. "Where the highest court of the state delivers no opinion and it appears that the judgment might have rested upon a nonfederal ground, this Court will not take jurisdiction to review the judgment." See Durley v. Mayo, 351 U.S. 277, 281 (1956); Stembridge v. Georgia, 343 U.S. 541, 547 (1952).

Here, leasehold improvements reverted to a landlord when certain leases were terminated. A subsequent lease was found null and void for

failure of a meeting of the minds on an essential term. This finding of invalidity was based on a review by the trial court of dozens of exhibits, hundreds of pages of pleadings, and the demeanor and credibility of numerous witnesses. It strains credulity that any party should claim that such an evidentiary finding does not rest on an independent and adequate state ground.

III. THIS COURT DOES NOT SIT TO REVIEW ISSUES OF LOCAL PROPERTY LAW.

It cannot be overemphasized that this petition turns on the unique facts of this case and raises questions of interest only to the parties herein. Those questions have been resolved in Respondent's favor by state trial and appellate courts and the United States District Court for the District of Hawaii.

For example, the trial court's judgment involved questions of the parol evidence rule and ultimately whether a lease was null and void for failure of a mutual meeting of the minds. Determination of such questions hinged upon the intent of the parties, as

evaluated by assessing the validity and credibility of witnesses. This in Hawaii, as in every other jurisdiction in the United States, is a proper function of a trial court. There is nothing sinister or conspiratorial about a trial court's application of long-standing and fundamental Hawaii law on lease contracts. See Jones v. Don L. Gordon Corp., 60 Haw. 12, 586 P.2d 1024 (1978); Shinn v. Yee, Ltd., 57 Haw. 215, 553 P.2d 733 (1976); Earl M. Jorgenson Co. v. Mark Constr. Inc., 56 Haw. 466, 540 P.2d 978 (1975).

Regarding the question of whether parties have validly agreed to a contract, this Court has repeatedly refused to review an issue so obviously local in nature. See Donohue v. Vosper, 243 U.S. 59 (1917) (adverse possession claim); Kryger v. Wilson, 242 U.S. 171 (1916) (contradictory claims to land based on what law governed cancellation of a land contract).

Petitioner claims a gargantuan conspiracy which presumably includes the legislative, executive, and judicial systems of a state of this country, as

well as the Federal judiciary in Hawaii. However, it is clear that this case turns on nothing more than particular parties' rights under particular leases and particular applications of local contract and property law. Petitioner has failed to cite any conflict between the Hawaii Supreme Court's decision here and any other jurisdiction. Petitioner does no more than point to other Hawaii cases and argue with the Hawaii Supreme Court. Reconsideration is the function of the Hawaii Supreme Court, not this Court.

IV. THE DECISION APPEALED FROM WAS FAIR AND CORRECT.

The trial court correctly found, and the Hawaii Supreme Court affirmed, that based on the substantial evidence in the voluminous record Petitioner and Respondent simply had not agreed on a vital provision of the Consolidated Lease. However, before Petitioner vacated Respondent's property, it subleased that property for four years. For that privilege, Petitioner's president merely paid $10

to PSTL and partially paid PSTL's back taxes. It should be noted that the same decision affirming the trial court ruling that the Consolidated Lease was null and void also denied Respondent's cross-appeal for greater rentals. See Appendix A to Petitioner's Brief.

Given the difference between Petitioner and Respondent on the necessity of a start-up date for interisland marine transportation service, the trial court could correctly rule only that the Consolidated Lease was null and void. Petitioner cannot deny that such a ruling was supported by the vast weight of the evidence.

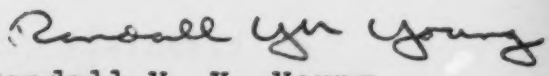
CONCLUSION

For all of the above reasons, the Petition for Writ of Certiorari should be denied, as this matter clearly does not warrant this Court's attention,

and a fair and just result was reached by the State of Hawaii judicial system.

DATED: Honolulu, Hawaii, October 9, 1984.

Respectfully submitted,



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405 State Capitol
Honolulu, Hawaii 96813
Counsel for Respondent
Director, Department of Transportation, State of Hawaii

JUDGMENT IN A CIVIL CASE

UNITED STATES DISTRICT COURT

DOCKET NUMBER 83-0858

Name of Judge or Magistrate - Samuel P. King

SEAFLITE, INCORPORATED, Plaintiff

vs. RYOKICHI HIGASHIONNA, etc., et al., Defendants

Decision by Court. This action came to hearing before the Court with the judgment named above presiding. The issues have been heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that this action is hereby dismissed on the ground that Plaintiff has failed to state a 42 U.S.D. §1983 claim because adequate state due process protections are available to Plaintiff.

Filed in the United States District Court District of Hawaii November 28, 1983 at 1 o'clock and 00 min. P.M. WALTER A.Y. H. CHINN, CLERK.

cc: Jack F. Schweigert, Tany S. Hong, Wilfred K. T. Pong, Annette Y. W. Chock and Randall Y. K. Young

Date: November 28, 1983

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SEAFLITE, INCORPORATED,	)
	)
Plaintiff/Appellant,	)
	)
vs.	)
	)
RYOKICHI HIGASHIONNA, Director, of Transportation, State of Hawaii; KENNETH KEITH; EILEEN ANDERSON; SUMUMO ONO; DONALD KUYPER; AARON LEVINE; THOMAS TRASK, Directors Aloha Tower Development Corp.; ROBERT HOLMAN, Executive Officer, Aloha Tower Development Corp.; and HIDETO KONO, Director, Dept. of Planning and Economic Development, State of Hawaii,	)
	)
Defendants/Appellees.	)

C.A. NO. 83-2724 ORDER
D.C. No. CV-83-0858-SPK HAWAII

ENTRY OF DISMISSAL

Pursuant to Rule 42(b), Federal Rules of Appellate Procedure, and the stipulation submitted by the parties, dismissal of this appeal is herewith entered.

(X) Each party to bear its own costs.

Phillip B. Winberry
Clerk of Court
BY: /s/ Sigmon Zeleke
Deputy Clerk

Filed April 20, 1984

APPENDIX B